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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAISY ZHANG,

Defendant and Appellant.

A142472

**(San Mateo County
Super. Ct. No. SC078583A)**

After the trial court denied appellant Daisy Zhang’s motion to suppress, she pled guilty to pimping (Pen. Code, § 266h, subd. (a)) and the court sentenced her to state prison.¹ Zhang appeals. She contends she was detained without reasonable suspicion.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are taken from hearing on the motion to suppress.

Near midnight on a January 2013 evening, San Mateo Police Officer Jason Pasero and his partner were in uniform in a marked patrol car driving along El Camino Real in San Bruno. Officer Pasero noticed a man — later identified as “Choi” — standing on the sidewalk in front of a motel, “looking back in towards” the motel’s carport area. Officer Pasero thought it was “odd” someone was “standing outside looking into the carport” and he knew there had been criminal activity at the motel, including “narcotic sales cases . . . in the carport.”

¹ Unless noted, all further statutory references are to the Penal Code.

The officers parked their patrol car in front of the motel. Officer Pasero saw Choi standing behind a Mercedes or BMW parked in the carport. He was loading four or five large black garbage bags — which Officer Pasero suspected contained narcotics — into the trunk. When he finished loading the bags into the trunk, Choi got in the car and drove away. The officers stopped Choi's car after he made an illegal U-turn. Officer Pasero's partner spoke to Choi; Choi "said he was coming from the [m]otel" and "doing something for a friend." With Choi's consent, Officer Pasero searched the trunk and found four or five black bags loaded with approximately 100 damp white towels. One of the officers used Choi's driver's license to conduct a "records check[.]"

During the traffic stop, Officer Pasero saw a woman — later identified as Zhang — "walking back and forth" across the motel's "second story tier walkway[.]" She watched the officers. Zhang then went downstairs and stood by a soda machine, continuing to watch the officers. Zhang "pretended" to purchase a soda: she reached into the machine but did not retrieve anything. At this point, the officers released Choi. Zhang immediately left the motel and began walking along El Camino Real. Officer Pasero suspected "potential criminal activity" because Zhang watched the traffic stop and left when it concluded, which made it "clear" she was Choi's "associate[.]" Officer Pasero also noted the "bags of the white towels were not normal" and Choi "did not have any luggage." Officer Pasero believed "the towels were possibly used for some type of massage or prostitution operation."

Officer Pasero and his partner left the motel and drove along El Camino Real, to "contact Ms. Zhang." The officers did not activate the car's lights or sirens. They parked near the intersection of El Camino Real and Santa Lucia Avenue, where they saw Zhang walking. Both officers got out of the car, but Officer Pasero's partner waited by the car, about 15 feet away from Zhang. As Officer Pasero approached Zhang, she turned around, as though she was going to walk in the other direction. Officer Pasero asked Zhang if he "could speak with her" and she nodded. "[B]eliev[ing] that to be a 'yes' response[.]" Officer Pasero "engaged [Zhang] in conversation about where she was coming from and asked her if she" knew Choi.

Zhang did not respond. She just “stared” at Officer Pasero and “look[ed] around” like she was waiting for “somebody or hoping somebody was going to arrive.” She also repeatedly placed her hands in her jacket pocket and then put them in a purse she was carrying over her shoulder. Officer Pasero was concerned, because he did not know whether Zhang’s pockets or purse contained weapons. Several times, Officer Pasero asked Zhang to keep her hands out of her pockets and purse. At some point, Zhang turned around and “shoved her hands into her purse” which “made a potential weapon accessible to her without [Officer Pasero] being able to see her get to it.” In response, Officer Pasero “told” Zhang to take her hands out of her purse and display them. Zhang appeared worried and continued to look around “in all directions.”

Officer Pasero “asked for consent to search [Zhang] and her purse[.]” Zhang responded, ““yes”” and removed her purse and handed it to Officer Pasero. Officer Pasero searched Zhang’s purse and found four cell phones, each marked with a different color of nail polish. Zhang claimed the phones did not belong to her but refused to identify the owner. Officer Pasero also found three envelopes containing \$1,100, \$580, and \$590 and Zhang’s driver’s license bearing the address to which Choi’s car was registered. Finally, Officer Pasero found hotel and motel business cards, and a notebook that “[l]ooked like a ledger” with dollar amounts Officer Pasero thought “might be transaction prices.” The notebook also contained “times, phone numbers, and other numbers” Officer Pasero “associated with possible hotel room numbers.” At this point, Officer Pasero believed Zhang was running a prostitution operation. Officer Pasero did not yell at Zhang, threaten her, inform her she was under arrest, or display his weapon.

While Officer Pasero talked to Zhang, another police officer went to the motel and learned several rooms had been rented in Zhang’s name. That officer visited those rooms and noticed the “regular white light bulbs” normally used in the lamps between the beds “had been replaced with red bulbs.” The rooms also had various oils and lubricants “consistent with prostitution[.]” Officer Pasero spoke with the officer, and then arrested Zhang.

Charges, Motion to Suppress, and Plea

The People charged Zhang with three counts of pimping (§ 266h, subd. (a)), and three counts of pandering (§ 266i). Zhang moved to suppress, claiming she was illegally detained. The People opposed the motion, contending the initial contact between Zhang and Officer Pasero was consensual, and Officer Pasero had reasonable suspicion to detain Zhang based on her “walking away from the police, failure to communicate with law enforcement after casual questioning, and furtive movements with her hand which raised significant concerns of officer safety.”

At the conclusion of the hearing, the court denied the motion to suppress, concluding the encounter between the officers and Zhang “started out as an allowed consensual contact[.]” The court explained “an officer may approach someone on the street and may ask questions without it being a detention. And this is what happened in this case. . . .” According to the court, the encounter remained consensual until Officer Pasero directed Zhang to keep her hands visible. At that point, Zhang was detained. The court concluded, however, the detention was lawful and Zhang consented to the search.²

Zhang pled no contest to one count of pimping (§ 266h, subd. (a)) and the court sentenced her to three years in state prison.

DISCUSSION

The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. “We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Police contacts with individuals fall into three broad categories: (1) consensual encounters; (2) detentions; and (3) formal arrests. (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*)) “[N]o reasonable suspicion is required on the part of the officer”

² Zhang petitioned for writ of mandate or prohibition directing the court to vacate its order denying her motion to suppress. We denied the petition. (*Zhang v. Superior Court* (Feb. 4, 2014, A140641) [nonpub. order].)

before initiating a consensual encounter. (*Id.* at p. 821; *People v. Hughes* (2002) 27 Cal.4th 287, 327 (*Hughes*)). To determine whether an encounter is consensual, a court considers “all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” (*Florida v. Bostick* (1991) 501 U.S. 429, 439.) “What constitutes a restraint on liberty such that a person would conclude that he is not free to leave varies with the particular police conduct at issue and the setting in which the conduct occurs. [Citation.]” (*People v. Ross* (1990) 217 Cal.App.3d 879, 884.)

Zhang contends she was “detained without justification” before she consented to the search because the officers: (1) recently detained “another hotel guest[;]” (2) followed and contacted her; and (3) questioned her. We are not persuaded. That the officers had previously detained Choi does not demonstrate they detained Zhang. (*Michigan v. Chesternut* (1988) 486 U.S. 567, 576, fn. 7 [officers’ subjective intent relevant “only to the extent [] that intent has been conveyed to the person confronted”].) That Officer Pasero questioned Zhang does not demonstrate she was detained. A “detention does not occur when a police officer merely approaches an individual on the street and asks a few questions.” (*Manuel G., supra*, 16 Cal.4th at p. 821.) “[L]aw enforcement officers may approach someone on the street or in another public place and converse if the person is willing to do so. There is no Fourth Amendment violation as long as circumstances are such that a reasonable person would feel free to leave or end the encounter.” (*People v. Rivera* (2007) 41 Cal.4th 304, 309.)

Here, Officer Pasero asked Zhang if he “could speak with her” and she nodded. Officer Pasero believed “that to be a ‘yes’ response[.]” so he “engaged her in conversation about where she was coming from and asked her if she had known the person that [the officers] had stopped[.]” These initial questions do not demonstrate Zhang was detained. (*Hughes, supra*, 27 Cal.4th at p. 328 [officer posed “basic and preliminary questions to establish whether defendant might possess information concerning the crime”].) At this point, there were no circumstances even remotely

suggesting Zhang was not free to leave: the officers' car did not block Zhang's way, and Officer Pasero's partner did not come anywhere near Zhang. Officer Pasero spoke to Zhang on a sidewalk in a public place, and he did not command Zhang to stop, touch her, or display a weapon. (*United States v. Drayton* (2002) 536 U.S. 194, 197-200.) We conclude the initial contact between Zhang and Officer Pasero was a consensual encounter.

Assuming the consensual encounter was transformed into a detention when Officer Pasero "told" Zhang to take her hands out of her purse and display them, the detention was lawful. (Cf. *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240-1241 [ordering defendant to remove his hands from his pockets did not transform consensual encounter into a detention].) A detention requires "articulable suspicion that the person has committed or is about to commit a crime." (*Manuel G., supra*, 16 Cal.4th at p. 821.) Here, ample evidence suggested "some criminal activity was afoot and that [Zhang] might be involved." (*People v. Holloway* (1985) 176 Cal.App.3d 150, 154.) The officers observed Choi loading black garbage bags into the trunk of his car late at night, in an area known for criminal activity. The officers found numerous white towels in the trunk of Choi's car, which Officer Pasero believed "were possibly used for some type of massage or prostitution operation." Zhang's conduct made it "clear" she was involved with Choi — she watched the traffic stop and left immediately when it concluded.

Additionally, Zhang behaved suspiciously during her encounter with Officer Pasero. When she saw Officer Pasero, she turned around and faced the opposite direction. She refused to answer Officer Pasero's questions, looked around the street in a furtive manner, and repeatedly put her hands in her jacket pocket and purse while he spoke to her. (See *People v. Souza* (1994) 9 Cal.4th 224, 233 [evasive conduct supports reasonable suspicion to detain].) She also ignored Officer Pasero when he asked her to keep her hands out of her pockets and purse. Together, the evidence establishes Officer Pasero had reasonable suspicion to detain Zhang.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Needham, J.